

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EXAMWORKS, a Delaware limited  
liability company,

Plaintiff,

v.

TODD BALDINI, an individual,  
ABYGAIL BIRD, an individual,  
LAWRENCE STUART GIRARD, an  
individual, PAMELLA TEJADA, an  
individual, ROE CORPORATION, and  
DOES 1 through 10,

Defendants.

No. 2:20-CV-00920-KJM-DB

ORDER

Plaintiff ExamWorks, LLC's ("ExamWorks") moves for a temporary restraining order accompanied by an order preserving evidence, discovery on expedited basis and sealing of documents provided to the court on May 5, 2020. On March 8, 2020 the court heard telephonic argument on the motions. Attorneys Robert Shwartz, Catherine Lui, Johanna Jacob, and Nathan Shaffer appeared on behalf of plaintiff; defendant, Abygail Bird, appeared pro se. Defendants Stuart Girard, Todd Baldini and Pamella Tejada did not appear. As discussed at hearing, Ms. Lui has now filed a declaration confirming prior electronic notice to all defendants of the telephonic hearing. Catherine Lui Decl., ECF No. 16.

1 After argument, the court indicated its intent to grant the temporary restraining  
2 order and the request to preserve evidence, as well as grant sealing in part; it took the matter of  
3 expedited discovery under submission and resolves all of the motions here. The court, having  
4 considered the arguments of counsel and the papers submitted with this matter, and for good  
5 cause shown, GRANTS the motions for a temporary restraining order, and discovery on  
6 expedited basis. The court GRANTS IN PART plaintiff's request to seal documents as explained  
7 below.

8 Defendants Lawrence Stuart Girard, Todd Baldini, Pamela Tejada and Abygail  
9 Bird (collectively, "defendants") are HEREBY NOTIFIED they have the right to apply to the  
10 court for modification or dissolution of this order on two (2) days' notice.

11 I. TEMPORARY RESTRAINING ORDER

12 In order to obtain a temporary restraining order, a party must make the same  
13 showing as required for a preliminary injunction by demonstrating "that he is likely to succeed on  
14 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
15 balance of equities tips in his favor, and that an injunction is in the public interest." *Stormans,*  
16 *Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council,*  
17 *Inc.*, 555 U.S. 7, 20 (2008)). Further, "[a] preliminary injunction [or temporary restraining order]  
18 is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised  
19 and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for Wild Rockies v.*  
20 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (quotation and alteration omitted).

21 The court finds that the applicable standard is met and that ExamWorks is entitled  
22 to a temporary restraining order because ExamWorks has shown (1) likely success on the merits  
23 of its trade secret misappropriation claims based on evidence that defendants transmitted and took  
24 such trade secret material into their possession in a manner contrary to ExamWorks' written  
25 policies and applicable employment agreements with plans to use the information to compete  
26 against ExamWorks; (2) use or disclosure of such material by defendants will damage  
27 ExamWorks; (3) such damage is likely to be irreparable because it will be in the form of lost  
28 business, lost customers, loss of goodwill, and similar harms that are difficult or impossible to

1 compensate with damages; (4) such irreparable harm is threatened and imminent such that a  
2 temporary restraining order is necessary to preserve the status quo until this matter can be brought  
3 on for hearing on ExamWorks' motion for preliminary injunction; (5) the balance of hardships  
4 tips strongly in ExamWorks' favor because defendants have no legitimate interest in the use of  
5 ExamWorks' trade secrets, and (6) the public interest favors injunctions to protect trade secrets.

6 Accordingly, defendants are ENJOINED as follows:

7 1. Defendants are ordered to immediately take all steps to preserve evidence relevant  
8 to the allegations of the complaint and/or their employment with ExamWorks, including, but not  
9 limited to, any email or cloud storage accounts, computers, servers, USB thumb drives, and any  
10 other electronic devices that contain relevant electronic evidence.

11 2. Defendants are further ordered, at their own expense, to make any electronic  
12 device or account that contains relevant electronic evidence available within 48 hours of this  
13 order to a neutral and mutually agreed-upon third-party forensic expert (the "Forensic Expert") in  
14 order to create a forensically sound image of said device, or, in the alternative, turn over the  
15 actual electronic device to the Forensic Expert. Such image or device is to be accessed or  
16 inspected only at such time as the parties stipulate to an acceptable forensic inspection protocol or  
17 upon further order of the court allowing such inspection.

18 3. Defendants and all persons in active concert or participation with them are hereby  
19 enjoined from acquiring, accessing, disclosing or using, or attempting to acquire, access, disclose  
20 or use any trade secrets or confidential information of ExamWorks, or derivatives thereof,  
21 including, but not limited to, any documents that discuss, forward, reference or incorporate the  
22 trade secrets or confidential information of ExamWorks. For purposes of this order, "trade  
23 secret" means all nonpublic "forms and types of financial, business, scientific, technical,  
24 economic, or engineering information, including patterns, plans, compilations, program devices,  
25 formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes,  
26 whether tangible or intangible, and whether or how stored, compiled, or memorialized physically,  
27 electronically, graphically, photographically, or in writing." *See* 18 U.S.C. § 1839(3). For

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1 purposes of this order, “confidential information” means all other information belonging to or  
2 otherwise relating to the business of ExamWorks or its affiliates that is not generally known.

3 4. Defendants and all persons in active concert or participation with them are hereby  
4 ordered to return all ExamWorks trade secrets and confidential information in their possession,  
5 custody, or control to the office of counsel for ExamWorks (Catherine Lui, Orrick, Herrington &  
6 Sutcliffe LLP, 400 Capitol Mall # 3000, Sacramento, CA 95814) within 48 hours of entry of the  
7 court’s order to the extent there are not materials already turned over to the Forensic Expert.

8 5. Once the preservation requirements in Paragraphs 1 and 2 are complete,  
9 defendants are ordered, at their own expense, to work with the Forensic Expert to permanently  
10 and forensically remove from all of their computers, servers and other electronic devices any  
11 trade secrets or confidential information of ExamWorks, or derivatives thereof, including, but not  
12 limited to, any documents that discuss, forward, reference, or incorporate the trade secrets or  
13 confidential information of ExamWorks, as defined in paragraph 3.

14 6. Defendants are hereby enjoined from conducting business with any individual or  
15 entity that did business with ExamWorks before defendants stopped working there to the extent  
16 those individuals or entities are identified in the trade secret materials misappropriated by  
17 defendants, including, without limitation, ExamWorks’ clients, medical providers and doctors.

18 The above temporary restraining order shall be effective immediately and no bond is  
19 required at this time.

20 II. ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

21 Defendants are ORDERED to appear telephonically or by videoconference, with  
22 the exact manner of appearance to be confirmed, on May 22, 2020, at 10 a.m. before the  
23 undersigned to show cause why a preliminary injunction should not be granted and why the  
24 temporary restraining order set forth above should not be extended such that defendants are  
25 restrained and enjoined pending trial as follows:

26 1. Defendants are ordered to immediately take all steps to preserve evidence relevant  
27 to the allegations of the complaint and/or their employment with ExamWorks, including, but not  
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1 limited to, any email or cloud storage accounts, computers, servers, USB thumb drives, and any  
2 other electronic devices that contain relevant electronic evidence.

3         2. Defendants are further ordered, at their own expense, to make any electronic  
4 device or account that contains relevant electronic evidence available within 48 hours of this  
5 order to a neutral and mutually agreed-upon third-party forensic expert (the “Forensic Expert”) in  
6 order to create a forensically sound image of said device, or, in the alternative, turn over the  
7 actual electronic device to the Forensic Expert. Such image or device is to be accessed or  
8 inspected only at such time as the parties stipulate to an acceptable forensic inspection protocol or  
9 upon further order of the court allowing such inspection.

10         3. Defendants and all persons in active concert or participation with them are hereby  
11 enjoined from acquiring, accessing, disclosing or using, or attempting to acquire, access, disclose  
12 or use any trade secrets or confidential information of ExamWorks, or derivatives thereof,  
13 including, but not limited to, any documents that discuss, forward, reference or incorporate the  
14 trade secrets or confidential information of ExamWorks. For purposes of this order, “trade  
15 secret” means all nonpublic “forms and types of financial, business, scientific, technical,  
16 economic, or engineering information, including patterns, plans, compilations, program devices,  
17 formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes,  
18 whether tangible or intangible, and whether or how stored, compiled, or memorialized physically,  
19 electronically, graphically, photographically, or in writing.” *See* 18 U.S.C. § 1839(3). For  
20 purposes of this order, “confidential information” means all other information belonging to or  
21 otherwise relating to the business of ExamWorks or its affiliates that is not generally known.

22         4. Defendants and all persons in active concert or participation with them are hereby  
23 ordered to return all additional ExamWorks trade secrets and confidential information in their  
24 possession, custody, or control to the office of counsel for ExamWorks (Catherine Lui, Orrick,  
25 Herrington & Sutcliffe LLP, 400 Capitol Mall # 3000, Sacramento, CA 95814) within 48 hours of  
26 entry of the court’s order to extent there are not materials already turned over to the Forensic  
27 Expert.  
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1           5.       Once the preservation requirements in paragraphs 1 and 2 are complete,  
2 defendants are ordered, at their own expense, to work with the Forensic Expert to permanently  
3 and forensically remove from all of their computers, servers, and other electronic devices any  
4 trade secrets or confidential information of ExamWorks, or derivatives thereof, including, but not  
5 limited to, any documents that discuss, forward, reference, or incorporate the trade secrets or  
6 confidential information of ExamWorks, as defined in paragraph 3.

7           6.       Defendants are hereby enjoined from conducting business with any individual or  
8 entity that did business with ExamWorks before defendants stopped working there to the extent  
9 those individuals or entities are identified in the trade secret materials misappropriated by  
10 defendants, including, without limitation, ExamWorks' clients, medical providers, and doctors.

11                 This order to show cause and all papers supporting the requested injunction shall  
12 be served on defendants no later than May 13, 2020, by hand delivery or via electronic delivery.  
13 Plaintiff will continue to have the obligation of ensuring defendants, individually or through  
14 counsel, are aware of the preliminary injunction hearing and filing deadlines.

15                 Any opposition papers to the requested injunction shall be filed with the Clerk no  
16 later than May 15, 2020, at 4:00 p.m., and, if any documents are submitted in camera and not  
17 filed via the CM/ECF system, those documents shall be served electronically on ExamWorks'  
18 counsel at that time.

19                 Any reply papers in support of the requested injunction shall be filed no later than  
20 May 18, 2020 at 4:00 p.m. and served by electronic delivery on defendants or their counsel at that  
21 time.

22                 The temporary restraining order granted herein on this day, May 8, 2020, shall  
23 expire on May 22, 2020, absent further order of this court.

24         **III.     DISCOVERY ON EXPEDITED BASIS**

25                 The court has also considered plaintiff's motion for expedited discovery and is  
26 satisfied defendants have received notice and have had sufficient time, even under the expedited  
27 circumstances, to respond to the motion. Plaintiff's will continue to have the obligation of  
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1 ensuring defendants, individually or through counsel, are served with exhibits A–D to  
2 ExamWorks’ motion.

3 The court having read and considered the motion and supporting documents  
4 thereto, finds it is not necessary to wait until June 5, 2020 for the scheduled hearing on this  
5 motion and so submits the motion now on the papers presently before it. ExamWorks has shown  
6 good cause for expedited discovery to allow it to pursue this action to protect its trade secrets,  
7 there currently is no showing of any prejudice to defendants, and expedited discovery will allow  
8 for development of the record by the time of the preliminary injunction hearing set above.

9 Accordingly, good cause appearing, the court GRANTS ExamWorks’ motion as  
10 follows: Defendants are ORDERED to appear for deposition at a mutually agreeable place and  
11 time but in no event greater than 14 days from the date of this order. Defendants also are  
12 ORDERED to respond to plaintiff’s request for production of documents and things, requests for  
13 inspection and interrogatories no later than 10 days from the date of this order.

14 IV. REQUEST TO FILE UNDER SEAL

15 Finally, plaintiff’s request to file under seal also is before the court. Having  
16 considered the request to file under seal, the declarations in support thereof, the pleadings on file,  
17 and any other relevant materials, the request to file under seal will be GRANTED IN PART.

18 Plaintiff shall submit to the court by the close of business on May 8, 2020,  
19 proposed redactions of the declarations covered by the request to seal. Following the court’s  
20 review of the proposed redactions, it will issue a final order resolving the request to seal.

21 V. SUMMARY

22 The court orders as follows:

23 (1) The Motion for a temporary restraining order is GRANTED;

24 (2) The Motion for discovery on expedited basis is GRANTED;

25  
26 (3) The Request to seal documents is GRANTED IN PART, subject to the explanation  
27 provided above;  
28

(4) The Ex parte application to shorten time for hearing on motion to expedited discovery is DENIED as MOOT.

This order resolves ECF Nos. 4, 5, 6 and 7.

IT IS SO ORDERED.

DATED: May 8, 2020.

  

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CHIEF UNITED STATES DISTRICT JUDGE